Supreme Court, U.S.
FILED
FEB 20 1996
CLERK

No. 95-977

In the Supreme Court of the United States

OCTOBER TERM, 1995

KELLY M. O'GILVIE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D. C. 20530
(202) 514-2217

3 pp

In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-977

KELLY M. O'GILVIE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

---

1. This petition is from the same judgment that is the subject of the petition for a writ of certiorari in *O'Gilvie* v. *United States*, No. 95-966. For the reasons stated in the brief in opposition to the petition for a writ of certiorari in No. 95-966, this petition should also be denied.*

2. Petitioner contends (Pet. 28-30) that the notice of appeal filed by the government was untimely. Petitioner asserts that an order of the district court dated November 30, 1993, accompanied by the Clerk's notation of judgment on that date, constituted the final

---

* We are providing a copy of the brief in opposition filed in No. 95-966 to petitioner.

judgment in this case. Petitioner argues that the notice of appeal was untimely because it was filed more than 60 days after that date (Pet. App. 5-6).

As both the district court and the court of appeals noted, however, the November 30 order and judgment did not resolve all of the issues presented in this case (Pet. App. 5-8 & n.5). The November 30 order therefore remained interlocutory until a final judgment was entered disposing of all of the issues in the case on December 7, 1993. The time for filing a notice of appeal thus did not begin to run until December 7, 1993 (*id.* at 8). The notice of appeal was filed by the government within 60 days of that date and was therefore timely (*ibid.*). There is no conflict among the circuits or other reason warranting further review of this fact-specific application of established law.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

FEBRUARY 1996